IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 163 of 2002
in
SPECIAL CIVIL APPLICATION No. 12474 of 2001
With
CIVIL APPLICATION No. 3047 of 2002

For Approval and Signature:

Hon'ble ACTING CHIEF JUSTICE MR.JN BHATT

and

Hon'ble MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

BHARATENDRANATH SURYANATH RAM

Versus

STATE OF GUJARAT

Appearance:

1. LETTERS PATENT APPEAL No. 163 of 2002
MS SNEHA A JOSHI for Appellant No.
NOTICE SERVED BY DS for Respondent No. 1,3
MR KM PATEL for Respondent No. 2

CORAM : ACTING CHIEF JUSTICE MR.JN BHATT

and

MR.JUSTICE K.A.PUJ

Date of decision: /05/2003

CAV JUDGEMENT

(Per : MR.JUSTICE K.A.PUJ)

The present Letters Patent Appeal is filed by the appellant - original-petitioner under Clause 15 of Letters Patent, against the order and judgment passed by the learned Single Judge of this Court on 6.3.2002 in Special Civil Application No. 12474 of 2001 whereby the appellant's prayer for compassionate appointment in respondent Corporation was not granted and the petition was dismissed.

2. The brief facts, giving rise to the present Letters Patent Appeal, are that the first appellant's father, who was serving with the respondent Corporation as Electrician Grade-I died on 26-3-1999 while he was in service. The appellant No.1, therefore, moved an application requesting the respondent Corporation to grant him an appointment on compassionate ground. The said application was moved on 13-5-1999. However, the respondent Corporation has not given any appointment on compassionate ground and therefore several representations were made by the appellant and ultimately by an order dated 29th August 2001 the appellant was informed that the respondent Corporation has discontinued the policy with regard to giving appointment on compassionate ground and had decided to give certain financial help to the legal heir of the employee who died in service.

3. Being aggrieved by the said decision of the respondent Corporation, the appellant has filed Special Civil Application No. 12474 of 2001, inter alia, contending that the appellant was meted out a step-motherly and discriminatory treatment and that the earlier policy, contained in Resolution No. 3180 of 12th August 1994 which was in existence at the relevant point of time when the application for compassionate appointment was made, was applicable and binding to the respondent Corporation and hence the appellant's case was governed by the said Resolution. However, the appellant's claim was rejected in view of the new Resolution No. 3752 of 13.7.2001 which came into effect subsequently with no retrospective effect.

4. On notice being issued by this Court in Special Civil Application, an affidavit-in-reply was filed by the

respondent Corporation stating therein that the respondent Corporation had in past the practice of giving compassionate appointment if an employee dies in harness. However, the said policy has been discontinued by the Corporation in view of the fact that the projects of the Corporation were not running satisfactorily since many years and there has been problems of overstaffing in the Corporation. It was further stated that 20 per cent of the posts were to be reduced in view of the implementation of the 5th Pay Commission Recommendations. Taking these aspects into consideration, the Board of Directors in its meeting held on 13-7-2001, passed the Resolution No. 3752 discontinuing the practice of giving appointment on compassionate ground and instead adopted Resolution for payment of lumpsum compensation depending upon the balance of service left of the concerned employee at the time of his demise. It was further stated that about 35 of such applications for compassionate appointments were pending with the Corporation and after the Board decided to offer lumpsum compensation as per its Resolution dated 13-7-2001, an aggregate amount of Rs. 1.53 Crores has been disbursed towards compensation as per the new policy of ex-gratia compensation to the 35 applicants who were heirs of the deceased employees of the Corporation. It was further stated that in terms of the said Board Resolution, compensation has been offered to the appellant but the appellant has decided not to accept the same. In this view of the matter, it was contended in the writ petition that the appellant, original-petitioner had no right to get compassionate appointment as there was no policy under which the appellant, original-petitioner can claim compassionate appointment.

5. Considering the rival submissions of the parties and the facts and circumstances of the case as well as the new policy adopted by the respondent Corporation, the learned Single Judge has held that the respondent Corporation has changed its policy and as laid down by the Hon'ble Supreme Court that no employer can be directed to give any appointment in violation of the policy framed by it, no direction can be given to the respondent Corporation for giving appointment on compassionate ground to the appellant.

6. It is this order of the learned Single Judge which is under challenge before us in this Letters Patent Appeal. Heard Ms. Sneha Joshi, learned advocate appearing for the appellant and Mr. K.M. Patel, learned advocate appearing for the respondent Corporation. At the time of admission of this appeal, this Court, in its

order dated 22-4-2002 has observed that in similar case, even though Mrs. B.N. Ghori applied after the application of the appellant, original-petitioner her case has been accepted for compassionate appointment whereas appellant's case is not treated under the old policy but is offered monetary compensation under the new policy manifested by the Resolution of the Board of Directors of GMDC held on 13th July 2001 superceding earlier Resolution of appointment on compassionate basis. This Court has further taken the note of the fact that this aspect was either not mindfully touched or vaguefully avoided in the affidavit-in-reply and probably that might be one of the reasons why it has not been finding place in the discussion portion of the impugned judgment of the learned Single Judge. This Court was therefore of the view that it was a fit case for further consideration and deeper probe by calling for relevant and required record from the concerned corporation. Accordingly, a comparative statement regarding service record of late Shri Suryanath Ram, Electrician-II, and late Shri M.F. Ghori, Superintendent (Lab.) was filed which brings out the distinguishing features between these two cases and also indicates as to how it weighs with the respondent Corporation to give the appointment of Mrs. Ghori on compassionate ground. It was stated that Mr. Ghori died of heart attack and there was no record of any serious ailment till date of death. It is further reflected from the said statement that Mr. Ghori was of 40 years old at the time of his death and he has died during office hours while on actual duty and still the period of 20 years service was left. As against this, the father of the appellant was 55 years old at the time of his death and he died during the service but not on duty on the day of death. He was suffering from kidney disease and the respondent Corporation had sanctioned 202 special leave for procuring good treatment and also incurred medical expenses of Rs. 1,33,860/=, and only six years' period of service was left.

7. The respondent Corporation has filed further affidavit in this appeal wherein it was contended that even if the case of the appellant was to be considered on the basis of the original Resolution of the Corporation providing for compassionate appointment, then also the appellant was not eligible for appointment in view of the fact that the monetary income of the family of the deceased employee exceeded Rs. 2,500/=. It was further submitted that earlier Resolution dated 12-8-1994 provided as to how ceiling of Rs. 2,500/= was to be computed. The heirs of deceased employee have been paid an amount of Rs. 3,55,420/= towards Provident Fund,

Gratuity and EDLI Scheme and if interest at the rate of 12% is calculated on this amount it would come to about Rs. 3,554/= per month. It was further stated that one son of the deceased employee was earning about 15,000/= per annum and the widow of deceased employee was also getting pension of Rs. 1,600/= per month. Considering this income, the appellant was not entitled to compassionate appointment since the income of the family of the deceased employee far exceeded Rs. 2,500/= per month.

8. As far as the income criteria is concerned, Ms. Sneha Joshi, the learned advocate appearing for the appellant has invited our attention to the Judgment of the Division Bench given in Letters Patent Appeal No. 176 of 2002 and other cognate matters on 1-10-2002, wherein it is held that by virtue of the Resolutions passed by the State Government on 10-3-2002 and 7-9-2002, the income limit has been removed from 1-1-1996 and in this context, this Court has held that considering the purpose and policy, the design and desideratum of according benefit of compassionate appointment to the member of the dependent family of the Government employee who died during harness, is to see that the family of the deceased employee whose member is eligible and entitled to be appointed on the basis of compassionate appointment to get away from the financial stringency, monetary crunch and likely vagrancy due to the loss of breadwinner of the family while in service of the Government and with a view to subserve the underlying purpose and object of the scheme, the appellant, State of Gujarat, was directed to take appropriate expeditious decision in pending cases within a period of 6 months. As against this, Mr. KM Patel, learned advocate appearing for the respondent Corporation submitted that the appellant's case is not governed by the said resolution of the State Government as the respondent Corporation has framed its own policy by passing the fresh resolution under which the policy of giving compassionate appointment was given a goby and even in earlier Resolution also, the income criteria was one of the important factors. Mr. Patel has further relied on the recent decision of this Court in Letters Patent Appeal No. 97 of 2002 and other cognate matters decided on 31-3-2003, wherein it is held that the income criteria mentioned in the instructions and policy framed by the State Government, this Court cannot interfere with the same and cannot direct the authorities concerned of the State Government contrary to the income criteria mentioned in the instructions and policy framed by the State Government. Even those instructions and policy or resolution or circular etc., are not framed under any

statutory rules under Articles 309 and 162 of the Constitution of India as the Supreme Court has directed that those instructions and policies should be adhered to and followed. Mr. Patel has therefore submitted that the appellant has no right to claim compassionate appointment in the respondent-Corporation.

9. After having heard the learned advocates appearing for the respective parties, and after having gone through the record of the petition as well as this Letters Patent Appeal and after considering the authorities cited by both the sides before us, we are of the view that the appellant is not entitled to claim compassionate appointment, as a matter of right, in view of the subsequent Resolution passed by the respondent Corporation on 13th July 2001. Even if we assume that the appellant's case is governed by the earlier Resolution dated 12-8-1994 as per the income criteria laid down therein, the appellant was not entitled to get the compassionate appointment as the income of the family of the deceased employee, admittedly, exceeded Rs. 2,500/= per month. As per the new Resolution, the whole policy was changed and no compassionate appointment was made by the respondent Corporation barring one exception of Mrs. Ghori and that too was properly explained during the course of arguments before us. It was emphatically stated in the affidavit-in-reply filed in the writ petition that 35 such applications for compassionate appointment were decided and the compensation to the extent of Rs. 1.53 Crores was given to such applicants. Under some special circumstances, if the compassionate appointment was given to Mrs. Ghori, that cannot be cited as a precedent and, on that basis, it is not open for the appellant to contend that stepmotherly or discriminatory treatment was given to the appellant. In our view, the appellant was offered an adequate compensation in lieu of the compassionate appointment and that was over and above the payment of Rs. 3,55,420/= already given to the appellant. During the course of his submissions, Mr. Patel had submitted that approximately an amount of Rs. 4 lakhs and odd was offered to the appellant. However, the same was not accepted by the appellant and the petition was filed before this Court challenging the decision of the respondent Corporation. Since no case was made out by the appellant for compassionate appointment, we are of the view that the appellant should be contented with the amount of compensation which was offered to the appellant by respondent-Corporation. However, the said amount was offered to the appellant on 29-8-2001 and the said amount was not accepted by the appellant because of the disputes

and litigations. We direct the respondent-Corporation to disburse the said amount to the appellant before us with simple interest at the rate of 10% p.a. with effect from the date of application, that is 13-5-1999 , moved by the appellant for compassionate appointment. We further direct the respondent Corporation to give this amount within a period of one month from the date of receipt of the writ from this Court or from the date of receipt of certified copy of this Judgment.

10. Subject to the aforesaid directions, the Letters Patent Appeal is disposed of with no order as to costs. In view of the order passed in the main appeal, the Civil Application No. 3047 of 2002 does not survive and stands disposed of accordingly.

rmr. [J.N. Bhatt, Actg. C.J.]

[K.A. Puj, J.]